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Resolution may be near for towns, companies dragged into massive N.J. pollution case



By [Ryan Hutchins/The Star-Ledger](#) The Star-Ledger

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NEWARK — A resolution may be near for scores of towns, public authorities and corporations that were dragged into one of the costliest hazardous waste cases in U.S. history.

A confidential proposal, a copy of which was provided to The Star-Ledger, would allow towns to extricate themselves from the case, involving Passaic River pollution, that has lingered eight years at a cost of tens of millions of dollars in legal fees.

The case being decided in state Superior Court has its roots in the 1950s and '60s, when the now-defunct Diamond Shamrock Chemicals of Newark dumped cancer-causing toxins — a byproduct of the Agent Orange it made for the military during the Vietnam War — into the river that slices through the cities and suburbs of northern New Jersey.

Two companies that succeeded Diamond Shamrock and faced a billion-dollar lawsuit over cleanup costs filed a countersuit in 2009. They claimed towns and other entities were responsible for other pollutants in the river and surrounding waterways and should help shoulder the expense.

Lawyers recently began circulating the 40-page proposed settlement, which stipulates that claims against all but the original companies named in the lawsuit could be dismissed if the municipalities and authorities agree to pay the state \$95,000, and private corporations pay up to \$195,000.

Under the terms, municipalities would be permitted to forgo state aid rather than write a check for the \$95,000.

Numerous people directly involved in the case refused to publicly discuss the proposed settlement, saying that to do so would be a serious breach of a court order to keep negotiations confidential. But privately, most agreed the settlement was likely to proceed with few, if any, changes.

The prospect of an agreement after years of litigation has municipal officials relieved. The accumulated court papers for the case fill a dozen cartons in the Essex County Hall of Records, and the list of attorneys involved represents a who's who of the state's leading law firms.

"I think it would be a positive for the city of Linden because it's costing us a fortune to represent ourselves in this case when, in actuality, we have nothing to do with polluting the Passaic River," Mayor Richard Gerbounka, who declined to disclose specifics about the case, said last week.

There is still a long way to go, however.

Even if all of the third parties agree to the terms of the settlement, it will be months before it takes effect. Municipal councils would be required to pass resolutions, and details of the agreement would have to be published in the state registry for public comment.

In addition, the original defendants — the chemical companies — will have a chance to fight it, because its acceptance by all parties could cost them hundreds of millions of dollars. Ultimately, Superior Court Judge Sebastian Lombardi in Newark will need to sign off.

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"If this does happen, it will allow the state to really focus on the major polluters to the river," Debbie Mans, the executive director of the NY/NJ Baykeeper, said. "The whole thing was just a distraction to delay the lawsuit... when they're ultimately responsible."

COST OF CLEANUP

While the amount of toxic substances dumped in the river isn't known, the federal government has estimated the cost of cleaning the most heavily contaminated area, near the site of the Agent Orange plant, at \$1 billion to \$4 billion.

In 2005, the state Department of Environmental Protection sued the successor companies to Diamond Shamrock, including Occidental Chemical, Tierra Solutions and Maxus Energy. Four years later, Tierra and Maxus drew hundreds of third parties into the case, claiming those entities also contributed to contamination and should share the cost of the cleanup.

Those third parties ranged from public authorities, like the Passaic Valley Sewerage Commission, to such retailers as Tiffany and Co. More than 70 towns were named in the case — from Summit and New Providence to Paterson and Newark — and many were accused of dumping untreated sewage into the river.

Bringing in the third parties — at one point more than 300 — slowed the case. Environmentalists said the delay benefited those responsible for the pollution, because the longer litigation took to be resolved, the more the contamination would dissipate and the cleanup cost would drop.

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"Lawsuits like this, where you're talking about billions of dollars in liability, they're being played out at multiple levels," Jeff Tittel, director of the New Jersey Sierra Club, said last week.

In late January, lawyers for the state and the third-party defendants notified the judge they had reached a preliminary agreement.

He issued an order allowing it to go to all of the attorneys involved and set a March 23 deadline.

The proposed settlement calls for at least 75 percent of the private companies ensnared in the case to sign off, along with at least 50 percent of the more than 70 municipal governments and public authorities. If those thresholds are not met, the state can void the settlement.

But those closely watching the case said support would probably be overwhelming.

"What the state is trying to do is shield the towns through this agreement," Tittel said. "And it's a good deal for the towns because the lawyers' fees will cost them more than this going forward."

Star-Ledger staff writer Jason Grant contributed to this report.